

FEDERAL ELECTION COMMISSION MAY -2 PM 4: 47
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FIRST GENERAL COUNSEL'S REPORT

MUR: 6521

DATE OF COMPLAINT: Jan. 11, 2012

DATE OF NOTIFICATIONS: Jan. 19, 2012

LAST RESPONSE RECEIVED: Mar. 4, 2013¹

DATE ACTIVATED: Mar. 20, 2012

DATE DEACTIVATED: June 18, 2012

DATE REACTIVATED: Jan. 2, 2013²

ELECTION CYCLES: 2010-2012³

EXPIRATION OF SOL:

(earliest) Jan. 1, 2014

(latest) Dec. 31, 2016

COMPLAINANT:

Citizens for Responsibility and Ethics in
Washington (CREW)

RESPONDENTS:

Republican Party of Minnesota and Bron Scherer in
his official capacity as treasurer
Anthony G. Sutton, in his personal capacity as former
treasurer and state chair

RR 12L-83

DATE OF REFERRAL: Sept. 26, 2012

DATE OF NOTIFICATIONS: Oct. 3, 2012

LAST RESPONSE RECEIVED: Nov. 30, 2012

DATE ACTIVATED: Jan. 2, 2013

EXPIRATION OF SOL:

(earliest) Jan. 1, 2014

(latest) Dec. 31, 2016

¹ On February 12, 2013, the Office of the General Counsel sent letters to counsel for the Republican Party of Minnesota ("RPM") and to Steve Hutton seeking clarification of their initial responses. On March 4, Sutton submitted an additional letter, and, on March 8, 2013, counsel for RPM stated during a phone call that RPM would not respond further.

² MUR 6521 was deactivated in order to consider the relationship, if any, between that matter and the forthcoming RR 12L-83. When RR 12L-23 was activated on Jan. 2, 2013, MUR 6521 was reactivated.

³ RPM's Response to the Complaint in MUR 6521 contends that the allegations relate to transactions in 2006. As discussed below, the available information indicates that the earliest activity occurred in 2009.

RESPONDENT: Republican Party of Minnesota and Bron Scherer in
his official capacity as Treasurer

**RELEVANT STATUTES
and REGULATIONS:**

2 U.S.C. § 432(d)
2 U.S.C. § 434(b)
18 U.S.C. § 1001
11 C.F.R. § 104.3(a)-(b), (d)
11 C.F.R. § 102.9(c)
11 C.F.R. § 104.14(1)-(3)
11 C.F.R. § 104.11(a)-(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

These matters involve overlapping allegations regarding debts that the Republican Party of Minnesota ("RPM") failed to timely disclose.

The MUR 6521 Complaint alleges that RPM and Anthony Sutton, its former treasurer and chair: (1) knowingly and willfully violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11(a)-(b) by repeatedly failing to disclose debts totaling at least \$415,211; (2) knowingly and willfully violated the conciliation agreement between the Commission and RPM in MUR 5926 by failing to disclose the same debts; and (3) knowingly and willfully violated 2 U.S.C. § 432(d), 11 C.F.R. §§ 102.9(c), 104.14(b)(1)-(3), and 18 U.S.C. § 1001 by failing to maintain records of the debts of RPM and by filing materially false reports with the Commission. The Complaint's allegations are based largely on news articles reporting that RPM held a December 30, 2011 news conference where RPM admitted that it had failed to report \$415,211 in debt. In response, RPM contends that the Commission previously addressed the Complaint's allegations in MUR 5926. And Sutton contends, among other

1 things, that he was not treasurer during the period in question and that any violations were not
2 knowing and willful.

3 In RR 12L-23, the Reports Analysis Division ("RAD") referred RPM to the Office of
4 General Counsel because RPM amended 30 monthly reports that it had filed originally from
5 2009 to 2011. Those amendments disclosed \$41,671.92 in additional receipts, \$151,345.07 in
6 additional disbursements, and \$395,305.81 in additional debts that were not disclosed on the
7 original reports, for a total increased activity of \$588,322.88. RPM responded that the
8 amendments "speak for themselves," were discovered in the course of an internal review, and
9 reflected "problems inflicted on the party by others" — an apparent reference to Sutton.

10 It appears likely that the same RPM internal review, conducted between early 2011
11 and early 2012, also resulted in the public disclosures that led to the Complaint in MUR 6521
12 and the amended reports that led to RR 12L-23. RPM's responses to MUR 6521 and RR 12L-
13 23, however, do not make the connection. Instead, RPM asserts that the activity identified in
14 MUR 6521 was previously addressed in MUR 5926 — which resolved allegations of
15 undisclosed debt from 2006. In contrast, RPM's response to the notice of the RAD Referral
16 acknowledges the new violations, but does not make a similar claim. RPM declined our
17 invitation to clarify the debts at issue.

18 We recommend as to MUR 6521 that the Commission find reason to believe that RPM
19 failed to disclose debts in violation of 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d),
20 104.11(a)-(b). In RR 12L-83, we recommend that the Commission open a MUR, find reason
21 to believe that RPM violated 2 U.S.C. § 434(b)(8), and merge the newly-opened MUR with
22 MUR 6521.

1 We further recommend that an investigation be conducted to confirm, among other
2 things, the extent to which the activity identified in the Complaint and the activity disclosed in
3 RPM's amended reports are the same activity or if some of the debts identified in the
4 Complaint are debts previously addressed by MUR 5926, as RPM contends.

5 An investigation may also clarify Sutton's role, if any, in the alleged violations.
6 Because we currently have little information on this issue, we recommend that the
7 Commission take no action at this time with regard to Sutton.

8 II. BACKGROUND

9 RPM is the state committee for the Republican Party in Minnesota and, therefore, it
10 maintains both state and federal accounts. Sutton was the RPM treasurer from May 2007 to
11 July 2009, and RPM chair from July 2009 to December 2011. During the last eight years,
12 RPM has repeatedly failed to accurately report its financial activity.

13 A. Misreported 2006 Debts — MUR 5926

14 On August 16, 2011, the Commission and RPM executed a conciliation agreement in
15 MUR 5926,⁴ in which RPM acknowledged that it had "failed to disclose at least \$994,319 in
16 outstanding debt to vendors during 2006 in violation of 2 U.S.C. § 434(b)," and it agreed to
17 "cease and desist from violating 2 U.S.C. §§ 434(b) and 441a(f) and 11 C.F.R. §§ 102.5(a)
18 and 106.7(f)."⁵ The scope of the violations to which RPM admitted in the conciliation
19 agreement was based in part on the Commission's 437g audit, which analyzed the
20 Committee's 2006 activities.

⁴ Conciliation Agreement at 7, MUR 5926 (Aug. 16, 2011) (Republican Party of Minn.) ("CA").

⁵ CA ¶¶ IV.9, VII, MUR 5926. RPM also agreed to pay a \$170,000 civil penalty. *Id.* ¶ VI.

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B. Audit of 2007-2008 Activity

The Audit Division also audited RPM for the period 2007-2008. The audit revealed that RPM understated: its 2007 receipts by \$75,267; its 2007 disbursements by \$71,446; and its 2008 Year-End Report cash-on-hand by \$174,238.⁶ The Commission ultimately found that the Committee corrected its misstatements through amended reports.⁷

C. RPM's 2011 Amendments to its 2009 and 2010 Reports

In the first half of 2011, RPM amended several of its 2009 and 2010 reports. These amendments disclosed a total of \$123,456.94 in previously undisclosed debts.⁸

Report	Newly Disclosed Debts
Amended 2009 October Monthly Report	\$8,606.84
Amended 2009 November Monthly Report	\$11,596.86
Amended 2009 Year End Report	\$5,516.96
Amended 2010 February Monthly Report	\$3,000
Amended 2010 April Monthly Report	\$424.05
Amended 2010 May Monthly Report	\$4,142.88
Amended 2010 June Monthly Report	\$8,733.73
Amended 2010 July Monthly Report	\$11,293.57
Amended 2010 August Monthly Report	\$1,314.84
Amended 2010 September Monthly Report	\$1,489.10
Amended 2010 October Monthly Report	\$32,215.25
Amended 2010 12 Day Pre-General Report	\$844.49
Amended 2010 30 Day Post-General Report	\$26,766.16
Amended 2010 Year-End Report	\$7,512.21
TOTAL:	\$123,456.94

⁶ Final Audit Report at 4 (Republican Party of Minn.) (Mar. 1, 2011).

⁷ *Id.* at 5-7.

⁸ RR 12L-83 (Republican Party of Minn.), Attach. 2.

D. RPM's News Conference and the MUR 6521 Complaint

On December 30, 2011, RPM held a news conference at which it described an internal report indicating that it had approximately \$2 million in debt, including \$415,211 in previously undisclosed debts.⁹ That same day, RPM's treasurer resigned; a few weeks earlier, Sutton had stepped down as RPM's chair.¹⁰

Relying primarily on news articles reporting these events, CREW filed its Complaint in MUR 6521 nearly two weeks later on January 11, 2012. In addition to the newly revealed debt, the Complaint cites reports that Sutton was "running wild" with RPM's finances and hid information about RPM's financial state from the RPM executive committee, regulatory agencies, and RPM's own treasurer.¹¹ Additionally, the Complaint cites RPM's 2011 December Monthly Report, which states that RPM owed \$542,005.12 in debts and obligations as of November 30, 2011. On the basis of these facts, the Complaint alleges that (1) RPM and Sutton knowingly and willfully failed to report RPM's outstanding debts and

⁹ Compl. ¶ 11, MUR 6521 (Jan. 11, 2012).

¹⁰ Baird Helgeson, *State GOP \$2 Million in Debt*, STAR TRIBUNE, Dec. 30, 2011 (attached to Compl. as Ex. 3).

¹¹ *Id.* The news articles reported that the "new information" disclosed at the press conference "showed a party burning through cash far faster than it was taking it in as the former chairman [Sutton] did not disclose mountains of debts to party leaders." *Id.* (emphasis added). Additionally, "Republican executive committee members said they had been fighting with Sutton for months over the release of party financial information" and "they were not able to get some documents they needed until after Sutton resigned." *Id.* Reportedly, Sutton resigned "amid complaints of the escalating debt." See Megan Boldt, *Minnesota Republican Party Debt Could Top \$2 Million*, TWIN CITIES.COM, Dec. 31, 2011 (attached to Compl. as Ex. 4). According to the media reports, RPM executive committee member, Pat Anderson, who was reportedly a former state auditor, stated "we knew we were being lied to" and that Sutton was "running wild" with party finances and "hiding bills not only from the executive committee, but regulatory agencies, even the treasurer." Compl., Ex. 3. The Committee's treasurer at the time, David Sturrock, who resigned the same day as the news conference, reportedly stated that "the unreported obligations identified by the current financial review were not known to me." *Id.* Sutton also released a statement, saying he did not regret spending money to win control of the Legislature for the first time in 40 years, suggesting that at least some of the RPM's \$2 million in debt was incurred for non-federal elections but not otherwise clarifying the \$415,000 in undisclosed debts. *Id.*

1 obligations; (2) RPM and Sutton knowingly and willfully violated the MUR 5926
2 conciliation agreement; and (3) Sutton knowingly and willfully failed to maintain records of
3 RPM's debts and obligations and filed materially false reports with the FEC.¹²

4 RPM responded to the Complaint on February 2, 2012. RPM does not contest that it
5 failed to disclose debts to the Commission. Rather, RPM asserts that the Commission already
6 considered all of the Complaint's allegations in the course of MUR 5926 (which it
7 conciliated), and that RPM "cannot be subjected to a second enforcement matter concerning
8 the same allegations."¹³ We invited RPM to clarify whether the debts identified in the
9 December 2011 news conference were the 2006-election-cycle debts addressed in the MUR
10 5926 conciliation agreement and to identify what portion of the \$415,211 in allegedly
11 undisclosed debts related to the 2006 election cycle.¹⁴ RPM declined to do so.

12 **E. RPM's 2012 Amendments to Its 2011 Reports**

13 Subsequently, on February 24, 2012, RPM amended its 2011 reports to disclose an
14 additional \$271,848.87 in previously undisclosed debt. Of that amount, \$92,863.13 is debt
15 that should have been reported in RPM's 2009-2010 election cycle reports. The remaining
16 \$178,985.74 is debt that was previously undisclosed from 2011.¹⁵

17
18

¹² Compl. ¶¶ 13-16, MUR 6521.

¹³ RPM Resp. at 1-2, MUR 6521 (Feb. 2, 2012).

¹⁴ Letter from Daniel A. Petalas, Associate General Counsel, FEC, to Thomas J. Josefiak, Counsel to RPM (Feb. 12, 2013).

¹⁵ RR 12L-83, Attach. 2.

Report	Newly Disclosed Debts
Amended 2011 February Monthly Report	\$32,941.59 ¹⁶
Amended 2011 March Monthly Report	\$8,404.36
Amended 2011 April Monthly Report	\$4,354.09
Amended 2011 May Monthly Report	\$24,356.16
Amended 2011 June Monthly Report	\$27,317.48
Amended 2011 July Monthly Report	\$2,961.34
Amended 2011 August Monthly Report	\$5,535.85
Amended 2011 September Monthly Report	\$7,631.29
Amended 2011 October Monthly Report	\$8,646.82
Amended 2011 November Monthly Report	\$49,441.23
Amended 2011 December Monthly Report	\$7,395.53
TOTAL	\$178,985.74

1
2 The exact relationship between the \$271,848.87 in previously undisclosed debt RPM reported
3 on February 24, 2012, and the \$415,211 in undisclosed debt RPM identified at the December
4 30, 2011 news conference is unclear.

5 **F. RAD Referral 12L-83**

6 On September 26, 2012, RAD referred RPM to OGC for enforcement, citing RPM's
7 amendments in 2011 and 2012, which disclosed additional receipts of \$41,671, additional
8 disbursements of \$151,345, and additional debts of \$395,305.81.¹⁷ RPM's Response to the
9 referral states that its "amendments speak for themselves," and also provides a limited
10 explanation of the amendments' "background and context."¹⁸ RPM noted that it was audited

¹⁶ The RAD Referral originally identified this figure as \$125,804.80, *see* RR 12L-83 at 13, but noted that some of this amount was in fact debts from 2010, *see id.* at 13, n. 1. It was later discovered that the \$125,804.80 figure was eight cents too high and should be \$125,804.72. *See* Email from Deborah Chacona, Chief, FEC Reports Analysis Division, to Michael Columbo (Apr. 30, 2013). The figure above, \$32,941.59, is the amount of newly disclosed debts specific to the period covered by the 2011 February Monthly Report. *See* Email from Deborah Chacona, Chief, FEC Reports Analysis Division, to Michael Columbo (Apr. 10, 2013).

¹⁷ RR 12L-83 at 1. The \$395,305.81 figure has been revised downward by eight cents from the total identified in the Referral in accord with the eight cent discrepancy in the 2010 debt amount identified by RAD in RPM's Amended 2011 February Monthly Report.

¹⁸ RPM Resp. at 1, RR 12L-83 (Nov. 30, 2012).

1 by the Commission for the 2007-2008 period, and that since that period, it had “undergone
2 substantial leadership and staff turnover.” After listing the three successive chairs of RPM
3 that served from 2005 to the present, RPM noted that its current staff had worked with RAD
4 since January 2012 “to correct the filings of its predecessors.”¹⁹ Amendments to the 2010
5 and 2011 reports had already been filed in 2011, RPM pointed out, and in February 2012,
6 RPM amended its 2011 reports. RPM emphasized that it undertook “lengthy and time-
7 intensive efforts to investigate, review, self-diagnose, and correct not only the Party’s FEC
8 filings, but also its underlying accounting books, records and other financial statements.”
9 RPM acknowledged that it “has suffered widely-reported financial mismanagement in recent
10 years,” but noted that this mismanagement was not the work of the current leadership and
11 staff, who instituted systems and controls to prevent a recurrence. And RPM noted that it
12 continues to struggle with its significant debt.²⁰

13 **III. ANALYSIS**

14 **A. MUR 6521**

15 **1. Alleged Reporting Violations**
16

17 The Complaint’s first claim is that RPM and Sutton knowingly and willfully failed to
18 disclose debts and obligations totaling at least \$415,211 in violation of 2 U.S.C. § 434(b)(8)
19 and 11 C.F.R. §§ 104.3(d), 104.11(a)-(b).

¹⁹ *Id.* at 2.

²⁰ *Id.*

1 As the Complaint points out, on December 20, 2011, RPM disclosed in its December
2 Monthly Report that it had a total of \$542,005.12 in debts and obligations.²¹ But ten days
3 later, "[o]n December 30, 2011, RPM held a news conference . . . revealing that [it] actually
4 has approximately \$2,000,000 in debt, including \$415,211 in debts that have never been
5 reported to the FEC."²²

6 Committees must include in their disclosure reports "the amount and nature of
7 outstanding debts and obligations owed by or to" them.²³ A committee must also
8 continuously report its debt and obligations until they are extinguished and do so "on separate
9 schedules together with a statement explaining the circumstances and conditions under which
10 each debt was incurred or extinguished."²⁴

11 RPM argues that the alleged undisclosed debts identified in the Complaint were
12 addressed by the Commission in MUR 5926.²⁵ In that MUR, RPM was alleged to have
13 underreported its debts to the Commission "[f]rom at least as early as May 2006 and
14 continuing through at least February 2007."²⁶ In the MUR 5926 conciliation agreement, RPM
15 agreed that it had "failed to disclose at least \$994,319 in outstanding debt to vendors *during*
16 *2006* in violation of 2 U.S.C. § 434(b)."²⁷ Here, there is substantial evidence that the

²¹ Compl. ¶ 10, MUR 6521.

²² *Id.* ¶ 11; *id.*, Exs. 3-4.

²³ 2 U.S.C. § 434(b)(8); *see also* 11 C.F.R. §§ 104.3(d) (same).

²⁴ 11 C.F.R. § 104.11(a)-(b).

²⁵ RPM Resp. at 1-2, MUR 6521.

²⁶ Compl. at 4-5, MUR 5926 (Republican Party of Minn.) (July 16, 2007).

²⁷ CA ¶ IV.9, MUR 5926 (emphasis added).

1 undisclosed debts RPM addressed in its news conference are from the period 2009 to 2011
2 and, therefore, were not resolved by the MUR 5926 conciliation agreement.

3 First, on January 5, 2012, just six days after the RPM news conference, RPM's finance
4 director, Ron Huettl, informed its assigned RAD analyst that RPM had discovered unreported
5 debts dating back to 2009 and asked for guidance as to how to disclose this discovery.²⁸ The
6 proximity of this call to the news conference strongly suggests that the debts Huettl asked
7 about were the same debts discussed in the news conference. After further communications,
8 RPM filed a Form 99 on July 31, 2012, which stated in full:

9 Clerical and data entry errors were discovered in early 2011 *going back to January of*
10 *2009* and amended monthly reports were filed in February 2011 to correct these
11 *inadvertent errors. Additional errors were discovered upon the committee's internal*
12 *financial review in late 2011 and early 2012 and additional amendments were filed in*
13 *February 2012 to correct those errors, as discussed with the reports analyst.*^[29]

14 The amended reports RPM filed in the first half of 2011 and February 2012 disclosed debts
15 totaling \$395,305.81. This total is close to the \$415,211 in undisclosed debts announced at
16 the news conference, suggesting that they may, at least in part, be the same debts.³⁰

17 Furthermore, RPM's Form 99 also links its amended 2011 disclosure reports to an "internal
18 financial review" RPM performed from late 2011 to early 2012, which was likely the same
19 internal review RPM discussed at the news conference that formed the basis of the Complaint.

²⁸ RR 12L-83 at 16.

²⁹ RR 12L-83 at 18 (emphasis added).

³⁰ One incongruity — in addition to RPM's assertion that the debts described at the news conference relate to MUR 5926 — is that RPM stated at the news conference that the \$415,211 in debts at issue were previously undisclosed. Of the \$395,305.81 in newly disclosed debts identified in the RAD Referral, \$123,456.94 had been disclosed in amended reports filed before the news conference. This discrepancy further supports our recommendation that an investigation is warranted to better understand the debts at issue in MUR 6521.

1 Second, Sutton's Response and clarification letter also suggest that the previously
2 undisclosed debts identified by RPM in its news conference arose after the 2006 debts
3 addressed in MUR 5926. Although Sutton asserts in his clarification letter that he does not
4 know the dates the debts were incurred or whether the debts were reportable to the
5 Commission,³¹ Sutton also states that "any actions I took were made in my capacity as State
6 Chair of [RPM], and not acting individually."³² Since Sutton served as state chair of RPM
7 from July 1, 2009, to December 4, 2011,³³ his Response suggests that the debts at issue here
8 arose during that timeframe. And that suggestion is consistent with the fact RPM amended
9 many of its 2009-2011 reports to reflect previously unreported debt.

10 In addition, Sutton's Response distinguishes between the allegations at issue here and
11 RPM's "previous FEC issues," for which it "hired an outside firm with FEC compliance
12 expertise that worked with the Treasurer for the purpose of filing federal and state reports."³⁴
13 These previous issues were likely related either to (1) the 2006 debts addressed in MUR 5926,
14 which proceeded through the Commission's enforcement process during Sutton's tenure as
15 RPM's treasurer and chair, or (2) the Commission's audit of RPM for calendar years 2007 and
16 2008, which covered a period of time that overlapped with Sutton's service as RPM's
17 treasurer and which was resolved while Sutton was the chair of RPM. Either way, Sutton's

³¹ See Letter from Tony Sutton to Michael Columbo, Staff Attorney, FEC (Feb. 25, 2013) ("Sutton Clarification").

³² Sutton Resp. at 1 (Feb. 5, 2012).

³³ Sutton Clarification at 1.

³⁴ Sutton Resp. at 1.

1 characterization of reports filed after the "previous FEC issues" supports the inference that the
2 debts at issue in the present matter differ from those resolved in MUR 5926.

3 Moreover, according to Sutton, the debts discussed by RPM at its news conference
4 include payments "revolving around the debts of the 2010 recount in the Minnesota
5 Governor's race."³⁵ This further indicates that the period of RPM's internal financial review
6 that uncovered the undisclosed debts was not confined to 2006, the year of the debts at issue
7 in MUR 5926.

8 Third, and finally, the news articles submitted in support of the Complaint also
9 indicate that the undisclosed debts in question were incurred during Sutton's term as chair
10 from 2009-2011. One article states that RPM released its internal report the same day as its
11 treasurer resigned and just a few weeks after Sutton resigned as party chair "amid mounting
12 pressure about party finances."³⁶ (The treasurer's term of service also roughly corresponded
13 to Sutton's term of service as state chair.) And RPM executive committee members
14 reportedly said "they had been fighting with Sutton for months over the release of party
15 financial information" and "were not able to get some documents they needed until after
16 Sutton resigned."³⁷

³⁵ *Id.*

³⁶ Compl., Ex. 3, MUR 6521.

³⁷ *Id.* Moreover, none of the articles submitted in support of the Complaint describe any mention of 2006 debts at the RPM news conference. To the contrary, the articles quote Sutton as saying that he "did not regret spending money to win control of the [Minnesota] Legislature for the first time in 40 years." *Id.* In the 2010 elections, Republicans gained a majority in the Minnesota Senate for the first time in 38 years. Similarly, RPM's debts identified in the review also included the remaining portion of the civil penalty it agreed to pay in MUR 5926 as a result of the August 2011 conciliation agreement in that case, thus establishing that the period of the review extended well past 2006 and included 2011. *Id.*

According to the other article attached to the Complaint, the "internal review" uncovered debts related to a 2010 recount, suggesting that the review was not limited to 2006 debts. Compl., Ex. 4, MUR 6521. The

1 Accordingly, the current record indicates that the alleged undisclosed debts identified
2 by RPM were likely not additional undisclosed 2006 debts that the Commission addressed in
3 MUR 5926, but rather were undisclosed debts RPM incurred between 2009 and 2011 and,
4 thus, beyond the scope of the MUR 5926 conciliation agreement. We therefore recommend
5 that in MUR 6521 the Commission find reason to believe that RPM and Ron Scherer in his
6 official capacity as treasurer violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.3(d), 104.11(a)-
7 (b).³⁸

8 **2. Alleged Violation of the MUR 5926 Conciliation Agreement**

9 The Complaint also alleges that RPM and Sutton knowingly and willfully breached the
10 conciliation agreement in MUR 5926 by allegedly failing to accurately disclose RPM's
11 debts.³⁹ In that agreement, which was executed on August 16, 2011,⁴⁰ RPM agreed to "cease
12 and desist from violating 2 U.S.C. §§ 434(b) and 441a(f) and 11 C.F.R. §§ 102.5(a) and

RPM internal review also discovered undisclosed credit card debt "incurred when Ron Carey chaired the party," which was through June 2009. *Id.* And "party leaders said they were working with election officials to correct campaign finance reports *dating back to 2009*, which could result in fines at the state and federal levels." *Id.* (emphasis added). This statement, which is corroborated by RPM's contacts with RAD in 2012, further establishes that the newly disclosed debts discussed at the RPM press conference do not predate 2009.

³⁸ The Complaint also alleges that RPM and Sutton *knowingly and willfully* violated these provisions. Compl. ¶ 14, MUR 6521. The Commission may hold a committee treasurer *personally* liable for "knowingly and willfully violat[ing] an obligation that the Act or regulations specifically impose on treasurers or where the treasurer recklessly failed to fulfill the duties imposed by law, or where the treasurer has intentionally deprived himself or herself of the operative facts giving rise to the violation." See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 3-4 (Jan. 3, 2005). Sutton was RPM's treasurer from March 19, 2007, through July 9, 2009. In his Response to the Complaint, Sutton suggests, among other things, that the alleged violations did not take place while he was RPM's treasurer. Until we have further information about the timing and circumstances of the undisclosed debt, including the dates of the unreported debts, and the reasons for RPM's failure to report the debts, we recommend that the Commission take no action at this time as to Sutton in his individual capacity or as to whether RPM's violation was knowing and willful.

³⁹ Compl. ¶ 14, MUR 6521. The respondents in the MUR 5926 conciliation agreement were the Republican Party of Minnesota and David E. Sturrock in his official capacity as treasurer. Sturrock resigned the same day as the RPM news conference — December 30, 2011. Sutton was not a respondent in MUR 5926.

⁴⁰ See Letter from Kasey Morgenheim, FEC Attorney, to Michael Toner, Counsel for RPM at 1, Attach. (Aug. 17, 2011).

1 106.7(f)."⁴¹ Thus, if RPM committed new violations of these provisions after the effective
2 date of the agreement, the Commission could conclude that RPM violated the cease and desist
3 clause of the agreement.⁴²

4 Although RPM has disclosed new debts that it failed to report in its August through
5 December 2011 reports, which post-date the conciliation agreement, the circumstances of its
6 discovery of these new debts is not clear. Because we recommend that the Commission find
7 reason to believe that RPM violated the Act by failing to properly disclose its debts and intend
8 to obtain more precise information about the timing, nature, and circumstances of the
9 undisclosed debts, we recommend that the Commission not make a finding at this time as to
10 the alleged breach of the conciliation agreement.

11 **3. Sutton's Alleged Failure to Maintain Records and False Statements**

12
13 The Complaint further alleges that Sutton, while serving as treasurer of RPM and
14 subsequently as its chair, "knowingly and willfully violated 2 U.S.C. § 432(d), 11 C.F.R.
15 §§ 102.9(c), 104.14[(b)](1)-(3) and 18 U.S.C. § 1001 by failing to maintain records of the
16 debts and obligations of [RPM] and by filing materially false reports with the" Commission.⁴³
17 As described above, a news article cited by the Complaint states that "reporting
18 discrepancies" existed when Sutton was treasurer and reports that Sutton refused to release
19 RPM financial information to Republican executive committee members, who claimed "that
20 they had not been able to get some of the documents they needed until after Sutton resigned

⁴¹ CA at 6, MUR 5926.

⁴² The Commission may institute a civil action if it believes that a person has violated a post-probable-cause conciliation agreement. 2 U.S.C. § 437g(a)(5)(D).

⁴³ Compl. ¶ 16, MUR 6521.

1 [as chair]."⁴⁴ The article further states that an executive committee member accused Sutton of
2 "hiding bills."⁴⁵

3 In his Response, Sutton makes a number of arguments, including that (1) he undertook
4 his actions in his capacity as the chair of RPM and not in his individual capacity; (2) the
5 articles upon which the Complaint are based are not accurate or complete; (3) RPM was not
6 required to disclose an unspecified portion of the undisclosed debts identified in the articles;
7 (4) the RPM official quoted in the articles was biased against him; and (5) RPM staff,
8 including himself, spoke to RPM's treasurer, who received daily finance reports.⁴⁶ Also, in
9 his clarification to his Response, Sutton claimed to have no knowledge regarding the
10 \$415,211 in unreported debt announced by RPM at the news conference.⁴⁷

11 It is unclear at this point whether the financial mismanagement alleged in the
12 Complaint, if true, resulted from an RPM failure to preserve its records and copies of reports
13 in violation of 2 U.S.C. §§ 432(d) and 11 C.F.R. §§ 102.9(c) and 104.14(b)(1)-(3). Even
14 assuming RPM failed to preserve its records and copies of reports as required by those
15 provisions, it is further unclear whether these alleged failures occurred while Sutton was
16 RPM's treasurer. Accordingly, until we have further information about the timing and
17 circumstances of the undisclosed debt, including the dates of the unreported debts, and the
18 reasons for RPM's failure to report the debts, we recommend that the Commission take no

⁴⁴ *Id.*, Ex. 3.

⁴⁵ *Id.*, Ex. 3.

⁴⁶ Sutton Resp. at 1.

⁴⁷ Sutton Clarification at 1.

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1 action at this time as to the alleged violations of 2 U.S.C. § 432(d), 11 C.F.R. §§ 102.9(c),
2 104.14(1)-(3).

3 As to the allegation that Sutton violated 2 U.S.C. § 1001 by filing false reports with
4 the Commission, that provision is a criminal prohibition beyond the jurisdiction of the
5 Commission to enforce, though in appropriate circumstances the Commission may refer
6 matters to the Department of Justice. However, as noted above, under the Act Sutton can be
7 held personally liable for misreporting under certain circumstances.

8 **B. RAD Referral 12L-83**

9 On September 26, 2012, RAD referred RPM to OGC for potential violations of
10 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(a), (b), and (d). The referral arose from RPM's 2011
11 and 2012 amendments to its reports. The amended reports disclosed additional receipts of
12 \$41,671.92, additional disbursements of \$151,345.07, and additional debts of \$395,305.81.⁴⁸

13 RPM does not deny that it failed to disclose the increased activity, nor does it explain
14 how or why the activity was not disclosed (other than by acknowledging mismanagement by
15 former personnel).⁴⁹ As noted above, the alleged violations identified in the RAD Referral
16 may be directly related to the alleged violations in MUR 6521. But RPM's Response to the
17 RAD Referral, submitted nearly ten months after its response to the Complaint in MUR 6521,
18 does not attempt to link the alleged violations in the RAD Referral to the allegations in MUR
19 6521 or, as it did in its Response to MUR 6521, assert that the Commission had already
20 resolved the allegations in MUR 5926.

⁴⁸ RR 12L-83 at 1.

⁴⁹ RPM Resp. at 1-2, RR 12L-83.

1 To better understand the relationship between the activity described in the RAD
2 Referral and the activity described in the Complaint in MUR 6521, and the circumstances of
3 the non-disclosures, we recommend that the Commission open a MUR, find reason to believe
4 that the Republican Party of Minnesota and Bron Scherer in his official capacity as treasurer
5 violated 2 U.S.C. § 434(b), and merge the newly-opened MUR with MUR 6521.

6 **IV. PROPOSED INVESTIGATION**

7 An investigation would confirm whether the increased activity disclosed in RPM's
8 amended reports listed in RR 12L-83 includes all of the undisclosed debts that formed the
9 basis of the Complaint in MUR 6521. If the Commission authorizes an investigation, we
10 intend to use informal means to quickly identify the debts at issue, determine if there is any
11 relationship between these debts and the conciliated allegations in MUR 5926, ascertain the
12 circumstances of RPM's failure to disclose the debts, and return to the Commission with
13 further recommendations as to RPM and Sutton. Although we would first seek information
14 voluntarily, we recommend that the Commission authorize the use of compulsory process,
15 including the issuance of appropriate interrogatories, document subpoenas, and deposition
16 subpoenas, if voluntary methods fail.

17 **V. RECOMMENDATIONS**

18 MUR 6521

19
20 1. Find reason to believe that the Republican Party of Minnesota and Bron Scherer in
21 his official capacity as treasurer violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and
22 104.11(a) and (b).
23

24 2. Take no action at this time regarding the allegation that Anthony G. Sutton
25 knowingly and willfully violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and
26 104.11(a) and (b).
27

3. Take no action at this time regarding the allegation that Republican Party of Minnesota and Bron Scherer in his official capacity as treasurer violated the conciliation agreement in MUR 5926.

4. Take no action at this time regarding the allegation that Anthony G. Sutton in his former capacity as treasurer violated the conciliation agreement in MUR 5926.

5. Take no action at this time with respect to allegations that Anthony G. Sutton in his former official capacities as treasurer and party chair knowingly and willfully violated, 2 U.S.C. § 432(d) and 11 C.F.R. §§ 102.9(c) and 104.14(b)(1)-(3).

RR 12L-83

6. With respect to RR 12L-83, open a MUR and merge the newly opened MUR with MUR 6521.

7. With respect to the increased activity described in RR 12L-83, find reason to believe that the Republican Party of Minnesota and Bron Scherer in his official capacity as treasurer violated 2 U.S.C. § 434(b).

MUR 6521 and RR12L-23

9. Authorize the use of compulsory process.

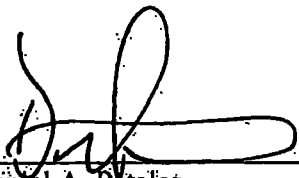
10. Approve the attached Factual and Legal Analyses.

11. Approve the appropriate letters.

Anthony Herman
General Counsel

05/02/13
Date

BY:


Daniel A. Petalas
Associate General Counsel
for Enforcement

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Mark D. Shonkwiler
Assistant General Counsel



Michael A. Columbo
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